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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/033,028	12/28/2001	Richard E. Smalley	11321-P012USD13	1029
7590	01/11/2005			
			EXAMINER	
			HENDRICKSON, STUART L	
		ART UNIT	PAPER NUMBER	
			1754	

DATE MAILED: 01/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.	Applicant(s)	
101133028	Smalley	
Examiner <i>H. Dickson</i>	Group Art Unit 1754	

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

Responsive to communication(s) filed on 10/28/04

This action is **FINAL**.

Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

<input checked="" type="checkbox"/> Claim(s) _____	<u>163, 164, 166, 170-174</u>	is/are pending in the application.
Of the above claim(s) _____		is/are withdrawn from consideration.
<input type="checkbox"/> Claim(s) _____		is/are allowed.
<input checked="" type="checkbox"/> Claim(s) _____		is/are rejected.
<input type="checkbox"/> Claim(s) _____		is/are objected to.
<input type="checkbox"/> Claim(s) _____		are subject to restriction or election requirement

Application Papers

- The proposed drawing correction, filed on _____ is approved disapproved.
- The drawing(s) filed on _____ is/are objected to by the Examiner
- The specification is objected to by the Examiner.
- The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).

All Some* None of the:

- Certified copies of the priority documents have been received.
- Certified copies of the priority documents have been received in Application No. _____.
- Copies of the certified copies of the priority documents have been received
in this national stage application from the International Bureau (PCT Rule 17.2(a))

*Certified copies not received: _____

Attachment(s)

Information Disclosure Statement(s), PTO-1449, Paper No(s). 10/28/04

Notice of Reference(s) Cited, PTO-892

Notice of Draftsperson's Patent Drawing Review, PTO-948

Interview Summary, PTO-413

Notice of Informal Patent Application, PTO-152

Other _____

Office Action Summary

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 163, 164, 166, 170-174 are rejected under 35 U.S.C. 102(a) and (b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Kiang et al. J. Phys. Chem.

The reference teaches on pg. 3750 cut nanotubes. SWNTs are depicted, however the discussion is general. In so far as claims 173, 174 require anything beyond nanotubes, then using SWNTs in a battery/fuel cell is an obvious expedient to exploit their electrical properties.

There was no fee or certification. The fee has been charged, and if not applicant is required to pay it with their response.

Applicant's arguments with respect to claims above have been considered but are moot in view of the new ground(s) of rejection.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication should be directed to examiner Hendrickson at telephone number (571) 272-1351.



Stuart Hendrickson
examiner Art Unit 1754